IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

CRL.A.No. 1051 of 1998()

ST.1391/1995 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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APPELLANT/COMPLAINANT:

K.K.PARAMESWARAN, PARTNER,
P.N. KRISHNADAS & COMPANY,
ABKARI CONTRACTORS, EDAPPALLY,
ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS/ACCUSED & STATE:

1.V.P.GEORGE, HOUSE NO.M.86,
CHANGAMPUZHA NAGAR, KALAMASSERY,
ERNAKULAM.

2.STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU -R2
ADV. SRI.G.HARIHARAN-R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.5.2007 ALONG WITH CRA NO. 240 OF 1999 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NOS.1051 OF 1998
&
240 OF 1999

Dated this the 24th day of May, 2007

JUDGMENT

These two appeals are filed by one and the same complainant against the same accused. Crl. Appeal No.1051 of 1998 is filed against the judgment in S.T.No.1391 of 1995 on the file of the Judicial First Class Magistrate's Court II, Aluva. Crl. Appeal No.240 of 1999 is filed against the judgment in S.T.No.1390 of 1995 of the same court.

2. The complaints were filed by the appellant alleging that the cheques issued in his favour by the first respondent herein for Rs.2,00,000/- and Rs.2,19,500/- respectively when presented to the bank for encashment were dishonoured for want of sufficient funds in the account of the first respondent. To prove the case against the first respondent, the appellant adduced separate evidence in both the case . He and the Manager of the bank were examined as PWs.1 and 2. No oral or documentary evidence was adduced on the side of the defence. On closing the evidence of the complainant, the accused was questioned under

Section 313 Cr.P.C. Denying the commission of offence, the first respondent - accused stated that he had not issued the cheques in question and that he had no transactions with the appellant - complainant. The first respondent also had a case that the cheques in question were not drawn from the account maintained by him. After a full fledged trial, the court below found that the appellant failed to prove the case against the first respondent and acquitted him in both the cases.

3. This Court heard the learned counsel appearing on either side. Learned counsel appearing for the appellant submits that in a similar case arising out of the same situation, the trial court acquitted the accused which was challenged before this Court and this Court as per judgment dated 1.4.2003 in Crl. Appeal No.1054 of 1998 set aside the order of acquittal and remanded the matter for fresh consideration, allowing the appellant therein to adduce fresh evidence, if any, to prove that the cheque in question was issued by the accused in that case and drawn from the account maintained by him.

4. The judgment of the trial court after the remand made by this Court in the connected matter is made available to this Court. In the said judgment, the trial court found that the appellant failed to prove that

V.P.George, the accused and Varghese Paul on whose account the cheque in question was drawn are one and the same person. Apart from the above finding, the evidence adduced in these cases also would show that the cheques in question were drawn on the account of Varghese Paul and not on the account maintained by the accused. No evidence was adduced by the appellant to show that the account in which the cheques were drawn was maintained by the accused - first respondent herein. There was also no evidence to show that V.P.George and Varghese Paul are one and the same person. In the above circumstances, the finding of the court below that the appellant failed to prove that the cheques in question were issued by the first respondent is based on evidence. As per Section 138 of the Negotiable Instruments Act, 1881, it is the duty of the complainant to prove that the accused had issued the cheque from the account maintained by him in discharge of a legally enforceable debt. In the above circumstances, this Court is of the view that the impugned judgments require no interference.

The Crl. Appeals are accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

**CRL.A NOS. 1051/1998 &
240/1999**

JUDGMENT

24TH MAY, 2007